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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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ALI MOSLEH

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EXAMINER

SOMERS, MARC S

ART UNIT

PAPER NUMBER

2159

NOTIFICATION DATE

DELIVERY MODE

06/08/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 09/385,299</p>	<p>Applicant(s) MOSLEH ET AL.</p>	
	<p>Examiner MARC SOMERS</p>	<p>Art Unit 2159</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

/James Trujillo/
Supervisory Patent Examiner, Art Unit 2159

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments (see second to last paragraph on page 2 through the first paragraph on page 5) have been fully considered but they are not persuasive. The applicant argues that the Ballantyne reference does not disclose all the claim limitations including that a "communication channel" that is selected from the "group consisting of: local wireless LAN, remote wireless LAN, wireline LAN, and public switched telephone network (PSTN)" as recited in claim 7. The Examiner respectfully disagrees. The rejection in the previous Office Action did not rely on the definition of a "communication channel" as described by Ballantyne in the rejection and the mere fact that Ballantyne describes a "communication channel" that appears to be different from the "communication channel" as described by the applicant's specification does not change the fact that Ballantyne teaches the claim limitations as described in the 35 USC 103(a) rejection above and also illustrated in the applicant's arguments in the second to last paragraph on page 4 where the applicant admits that Ballantyne uses a coaxial cable or wireline LAN as a communication medium/communication channel when sending and receiving data related to patients in a hospital.

The applicant argues in the second paragraph on page 5 through the first full paragraph on page 6 that the Ballantyne and Cohn references, whether individually or combined, fail to teach that the communication channel is selected based on the communication profile and on a location of the portable access device with respect to the network server. The Examiner respectfully disagrees. Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Furthermore, as described above in the 35 USC 103(a) rejection of the claims, Ballantyne in view of Cohn teach the usage of the communication profile for the portable access device so that the communication system can identify the different communication media/channels that are used to communicate data with the central server so that any medical personal can use any communication channel associated with a communication profile thus enabling the central server to be able to communicate successfully with various disparate networks that are trying to communicate information with the central server. As discussed in the 35 USC 103(a) rejection, the communication channel relates to the type of medium to which the portable access device is trying to use to send the patient information to the hospital. Furthermore, as shown the portable access device has the communication profiles for communicating information via an infra red communication channel, wireless communication channel, and also via a fiber optic, twisted pair, or coaxial cable when the portable access device is located at an external location.

The applicant argues in the last paragraph on page 6 through the second to last paragraph on page 7 that the Ballantyne and Cohn references, whether individually or combined, fail to teach the selection of a communication channel based on a communication profile and a location of the portable access device. As discussed above, this argument has already been addressed and the combination of Ballantyne and Cohn do in fact teach the claimed limitations as laid out in the 35 USC 103(a) rejection. The applicant further argues that the Examiner provided conclusory statements regarding the combination of Ballantyne and Cohn. The Examiner respectfully disagrees. The rational underpinning to support the legal conclusion of obviousness, as discussed in the 35 USC 103(a) rejection in the previous Office action stated that it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the communication system as taught by Ballantyne by incorporating the database of communication profiles as taught by Cohn in order to allow the communication system of Ballantyne in view of Cohn to identify the different communication media/channels that are used to communicate data with the central server so that any medical personal can use any communication channel associated with a communication profile thus enabling the central server to be able to communicate successfully with various disparate networks that are trying to communicate information with the central server.

The applicant argues in the last paragraph on page 7 that the Final Office Action did not properly determine the scope and content of the prior art while ascertaining the differences between Ballantyne and Cohn. The applicant further argues that the Office Action did not articulate a reason why "one skilled in the art" would have found the features of claim 7 obvious. The Examiner respectfully disagrees. In the second to last paragraph on page 7, the applicant admitted that the Examiner did ascertain the differences between the prior art and the claimed subject matter. The Examiner is confused as to how the applicant can admit that the Examiner ascertained the differences between the prior art and the claimed subject and then in the next paragraph argue that the Examiner did not ascertain the differences between the prior art and the claimed subject matter. In either case, the Examiner directs the applicant's attention to the 35 USC 103(a) rejection section in the previous Office action and the remarks in the above paragraph that discuss scope and content of the prior art being used as well as their differences with the claimed subject matter. In the same 35 USC 103(a) rejection section and also discussed in the above paragraph, the Examiner articulates a rationale supporting the combination of the references.

The applicant argues in the second paragraph on page 8 through the second paragraph on page 11 that the other independent claims are allowable for similar limitations as recited in independent claim 7 and also that the dependent claims are allowable for depending upon allowable independent claims. The Examiner respectfully disagrees. As discussed above, the rejection for claim 7 still stands therefore the rejection to the other independent claims and their respective dependent claims still stand.

Continuation of 13. Other: In the last paragraph on page 11, the applicant provides a statement that they do not agree that claims 14 and 17, and claims 43 and 46 have "substantially similar claim bodies". The Examiner acknowledges that the applicant's statement has been reviewed.